IN THE HIGH COURT OF GUJARAT AT AHMEDABAD.

SPECIAL CIVIL APPLICATION No 1580 of 1990

For Approval and Signature :

Hon'ble MR. JUSTICE S.K.KESHOTE

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1. Whether Reporters of Local Papers may be allowed to see the Judgment ?

2. To be referred to the Reporter or not?

3. Whether Their Lordships wish to see the fair copy of the Judgment ?

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?

5. Whether it is to be circulated to the Civil Judge?

HV KANSARA

VERSUS

STATE OF GUJARAT

Appearance:

MR BAXI for Petitioner

CORAM : MR JUSTICE S.K. KESHOTE

Date of Decision : 17/02/2001

C.A.V. JUDGMENT

#. Heard the learned counsel for the petitioner.

#. The petitioner has prayed for direction to the respondents to promote him to the post of Joint Registrar of the Cooperative Societies w.e.f. 17th August, 1987. Second prayer made is for conferring upon the petitioner, the benefits of seniority in the cadre of Joint Registrar of Cooperative Societies as if he was promoted w.e.f. 17th February, 1987. Last prayer has

been made for giving all consequential benefits i.e. future promotion and retirementary benefits as if he was promoted to the post of Joint Registrar of the Cooperative Societies w.e.f. 17th February, 1987.

#. From the facts of this case, I find that the petitioner wanted both the promotion and posting only at Ahmedabad. He do not want to go out of Ahmedabad. It is not in dispute that under the order dated 17th February, 1987, the petitioner was ordered to be promoted to the post of Joint Registrar. It is stated to be a regular promotion of the petitioner. However, the petitioner vide application dated 9th March, 1987 declined to accept promotion on the ground that he is unable to join at the posting place due to multiple fractures. In that application it is also requested for his posting on another vacancy at Ahmedabad. From this application, I find that he has voluntarily given up his promotion and as per the Government resolution his case for promotion should not have been considered for six months from the date of promotion. He has admitted that his case could not have been considered for promotion upto 17th July, 1987 and I fail to see any justification in the prayer made by the petitioner for giving him promotion and consequential benefits from 17th February, 1987 on the post of Joint Registrar of the Cooperative Societies. This giving up of the promotion by the petitioner on the ground that multiple fractures were there, was nothing but only a giving up of the promotion as he was not posted at Ahmedabad. The family of the petitioner was residing at Ahmedabad. He was posted at Himmatnagar, near to Ahmedabad and after promotion, he was posted at Rajkot at a distance and that is the reason that the petitioner has given up this promotion. So far as the ground given of multiple fractures for not accepting the promotion is concerned, is also no ground at all. This has been mentioned probably for the reason to get the benefit of seniority on his promotion from the date of first promotion. The fracture was on the fingers of the petitioner. It is not the case of the petitioner that after this fracture, the petitioner was not attending the duties at Himmatnagar. Otherwise also, it was not such an injury, which would have come in the way of the petitioner to join at Rajkot. This promotion is given up by the petitioner only for the reason that he wanted his promotion and posting both at the place of his choice. This request made by the petitioner has been accepted by the respondents vide their letter dated 27th May, 1987. The petitioner's case could not have been considered for promotion for six months and all the vacancies which fell vacant

during this period of six months are to be filled in by the junior persons and the action of the respondents accordingly to give the promotion to juniors is perfectly legal and justified. In para-4 of the petition, reference has been made of the junior person Mr.Jeradi who has been given promotion. He only referred to the date of the order but he failed to consider that the promotion is made against the post which fell vacant during the six months period. In para-4, the petitioner has come up with the case that he is not challenging the promotion of juniors for the reason that sufficient posts are available. This has been stated for the reason to give explanation for not impleading junior person as a party. If we go by the prayer made by the petitioner certainly if it is allowed then he will become senior to those juniors i.e. their seniority will be adversely affected, and, as a result of which, their future promotion may also be affected. The relief as prayed for by the petitioner seeking promotion, seniority and other benefits from 17th February, 1987, cannot be granted in the absence of juniors. It is true that he is not challenging the promotion of juniors as certainly on grant of this prayer, their rights of seniority and future promotions would be adversely affected. It is a case where the claim made by the petitioner for his promotion from 17th February, 1987 cannot be accepted. However, so far as the claim for promotion after 17th August, 1987 is concerned, the petitioner filed this petition for the same after considerable delay. The petitioner waited for his retirement and at the fag end of his retirement, he filed this petition. Taking into consideration the totality of the fact of this case, no relief as prayed for by the petitioner can be granted.

#. As a result of the aforesaid discussion, this petition fails and the same is dismissed. Rule discharged. Interim relief, if any, granted stands vacated. No order as to costs.

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